

The Chartered Surveyors' Institution

(Incorporated by Royal Charter),

12, GREAT GEORGE STREET, WESTMINSTER, S.W.

PATRON:

HIS MAJESTY KING GEORGE VI.

TRANSACTIONS

VOL. LXIX.

SESSION 1936-37.



LONDON:

PUBLISHED AT THE INSTITUTION

ENTERED AT STATIONERS' HALL.

[All Rights of Translation and Reproduction reserved.]

NOTICE.

The Institution does not, as a body, hold itself responsible for statements made or opinions expressed either in the papers read or the discussions which have occurred at the Meetings.

CONTENTS OF VOL. LXIX.

Page.	—	No. of Paper.	Author of Paper.	Date.
	Title-page of Vol. LXIX.			
v	List of Officers for 1936-1937.			1936.
2	Opening Address	570	J. M. Theobald	Nov. 9
	Town and country planning as affecting the private land- owner:			
27	(A) From the point of view of a private practitioner	571	C. F. Stone, F.L.A.S.	Dec. 7
39	(B) From the point of view of a clerk to a local authority	572	F. E. Warbreck Howell	Dec. 7
58	Discussion on Papers No. 571 and No. 572	...		Dec. 7
80	Nation's food supplies in rela- tion to defence	573	Major Nelson Rooke, F.L.A.S.	1937. Jan. 11
118	Discussion on Paper No. 573...	...		Jan. 11
133	Revision of Ordnance Survey 25-inch plans from air photographs	574	Major R. Ll. Brown, R.E.	Feb. 8
165	Air raid precautions: Some principles of protection in air raids	...	Colonel W. Garforth, D.S.O., M.C.	Jan. 25
185	Discussion on Paper No. 574...	...		Feb. 8
199	The Public Health Act, 1936	575	Christopher Chart	March 1
232	Discussion on Paper No. 575...	...		March 1
247	Valuation of life interests in real property and reversions	576	F. L. Collins, F.I.A.	April 5
274	Discussion on Paper No. 576...	...		April 5
286	The rental value of light ...	577	G. Leslie Head	May 10
320	Discussion on Paper No. 577...	...		May 10
	Annual General Meeting for the Election of Officers for 1937-1938.			
	Report of Council.			
	Accounts, 1936.			



Digitized by the Internet Archive
in 2026

OFFICERS, 1936-37.

COUNCIL.

President.

JOHN MEDOWS THEOBALD (London)

Senior Vice-President.

ROBERT COBB (Kent)

Vice-Presidents.

HERBERT COVINGTON COLE, C.B.E.	FRANCIS PETER (Glos)
(London)	EDWARD JOHN SILCOCK (Yorks)

Members of Council.

JAMES BARR (Scotland)	FRANK WILLIAM HUNT, C.V.O.
JOHN FRIENDSHIP BOWDEN (Devon)	(London)
SIR CHARLES HERBERT BRESSEY,	SYDNEY APPLETON KELLY (Lancs)
C.B. (London)	HERBERT JAMES KING (Middlesex)
CHRISTOPHER CHART (Surrey)	CUTHBERT LAKE (London)
WILLIAM HENRY CHRISTY CLAY,	HORACE WILLIAM LANGDON (London)
O.B.E. (London)	GEORGE ARTHUR LANSDOWN (London)
HENRY FREDERICK COBB, C.B.E.	LEWIS OSLER MATHEWS (Warwick)
(London)	ARTHUR WALKER MERRY (Beds)
WILLIAM HAROLD EVE (London)	JOHN OSCAR NESBITT (Notts)
HARRY FRANKS (Ireland, Free State)	JOHN MERRY PORTER (N. Wales)
GILBERT GARDNER (Sussex)	JOHN SCOTT (Northumberland)
ARTHUR NORMAN GARRARD (London)	HENRY EDWARD SHERWIN (London)
SIR CHARLES HENRY GOTT (Yorks)	ROLAND INGLEBY SMITH, O.B.E.
JOHN HERBERT HALL (Lancs)	(Northern Ireland)
DRYLAND HASLAM (Berks)	ARTHUR LLOYD THOMAS, M.B.E.
OSWALD HEALING (London)	(S. Wales)
ROBERT HENDRY (Scotland)	GEOFFREY LESLIE VIGERS (London)

Professional Associates of Council.

WILLIAM ROBERTSON BRACKETT	HUGH BRIAN EVE (London)
(Notts)	FRANCIS JOHN TRUMPER (London)
ORFEUR FREDERIC COOKE-	
YARBOROUGH (Yorks)	

Associates of Council.

COLONEL SIR GEORGE LOYD COURTHOPE, BT., M.C., M.P.
SIR HARRY COURTHOPE-MUNROE, K.C.

Past Presidents (*Ex-officio Members of Council*).

LESLIE ROBERT VIGERS (London)	DENDY WATNEY (London)
SIR W. EDGAR HORNE, BT. (London)	CHARLES HERBERT BEDELLS (London)
JOHN HENRY HANSON (Yorks)	ERNEST HOLTHAM LEEDER
ARTHUR LYON RYDE (London)	(South Wales)
SIR JOHN HUBERT OAKLEY, G.B.E.	JOHN EVANS BIDWELL (Cambs)
(London)	CHARLES GERALD EVE (London)
JOHN WILLMOT (Warwickshire)	PERCIVAL FOX TUCKETT (London)
JOHN MCCLARE CLARK	ALAN ARNOLD (Hampshire)
(Northumberland)	HARRY MERRIDEW STANLEY (London)
SIR EDWIN SAVILL, O.B.E. (London)	

Honorary Secretary.

HERBERT ARTHUR STEWARD

Secretary.

MAJOR ALEXANDER H. KILLICK,
D.S.O., M.C., M.A.

Assistant Secretaries.

H. GODFREY EVANS, M.A.
CHARLES G. SIMPSON, M.A., LL.B.

Transactions *of* The Chartered Surveyors' Institution

SESSION 1936-1937.

FIRST ORDINARY GENERAL MEETING OF THE
SESSION 1936-37.

*Held at the Chartered Surveyors' Institution, Monday,
9th November, 1936.*

Mr. J. M. THEOBALD (President) in the Chair.

Prior to the meeting, the PRESIDENT, on behalf of the members, placed a wreath of Flanders poppies at the foot of the Institution's Memorial to the memory of the members, students and examinees who had fallen in the Great War, the members present standing at attention while "The Last Post" and "The Reveille" were sounded by a bugler of the 3rd Battalion the Grenadier Guards.

NEW MEMBERS.

The following new members were received by the PRESIDENT prior to the meeting and signed the Register:—

Professional Associates :

ADAMSON, KENNETH DOUGLAS	MEEK, DENNIS SYDNEY HERMAN
ARNETT, FRANCIS ALBERT	MORRISON, FREDERICK RICHARD
ERNEST	ORTNER, EVAN FRANK
BOWDEN, SPENCER ALBERT	OWEN, RONALD WATKINS
BREWER, FREDERICK RICHARD	RANSON, FREDERICK CECIL
REGGIE FRANK	RUTTER, LIONEL CHARLES
BURGE, FRANCIS GEORGE	WHITTALL
BURROW, GEORGE WILLIAM	SANDERS, KENNETH MARTYN
BROWN, NORMAN	SKINNER, WALTER JOHN
CANNELL, JOHN BENJAMIN	SPRAGUE, COULAM ALFRED
CARRELL, RICHARD KEITH	JOSEPH
DAVIES, FRANK KENNETH	STOPHER, HAROLD EDWARD
DYKES, ALEC. ARTHUR	TROUT, GEOFFREY ROBERT
ELLIS, RICHARD CUTHBERT	HENRY
GREEN, WILFRED DUDLEY	VALENTINE, MARTIN ARTHUR
HARRIS, ALFRED SELLER	JOSEPH
HAWKES, JOHN CAMERON	WOOD, ALAN BERNARD
KIRKBY, WILLIAM STANLEY	WORTH, STANLEY GEORGE
LASSETER, ERIC GEORGE B.,	YOUNG, ERIC RUTHERFORD
B.COM. (LOND.)	YOUNG, W. BALFOUR
LAZARUS, SAMUEL	

The PRESIDENT then delivered the following Opening Address:—

PAPER No. 570.

PRESIDENT'S OPENING ADDRESS.

9th November, 1936.

As the first quantity surveyor who has been elected to the Chair of the Institution since 1904, and as third quantity surveyor President in the history of the Institution, I cannot begin the address which our By-laws require me to deliver,

without saying how sincerely I appreciate the honour which has been conferred upon me, and through me, upon the particular branch of the profession which I represent. It is an honour which carries with it responsibilities that increase rather than decrease as the years pass by, responsibilities which a man might well hesitate to assume were he not assured in advance of the help and advice of the Council and the support of his fellow-members both collectively and individually. Fortunate in the possession of that assurance, I accept those responsibilities gladly, and shall spare no effort to prove myself worthy of an honour which I am very proud to have received.

One after another, the Presidents who have preceded me have referred to the difficulties which they have experienced in making their opening addresses as interesting to members as they would wish. My difficulties have been no less than theirs ; perhaps they have been even greater, because as a quantity surveyor I must clearly confine myself to quantity surveying—a subject which I realise may be less interesting to members practising in other branches of our profession than to the minority which I happen specially to represent.

Since the Institution was founded in 1868 only two Presidents (Mr. T. M. Rickman and Mr. Herbert T. Steward), both of them bearers of honoured names in our profession, have practised as quantity surveyors. The name of Steward still lives, I am glad to say, in the person of Herbert Arthur Steward, our valued and popular Honorary Secretary, whose name, inscribed on the panel at the opposite end of the room, faces that of his father in the roll of Past-Presidents behind me.

Thirty-seven years have passed since Mr. Rickman read his masterly presidential address. In those days life, even the life of a quantity surveyor, was cast in comparatively pleasant places ; its *tempo* was slower than in these complex and strenuous times. Scientific research and invention have given us new building materials, new

methods of construction, new appliances of all kinds for use in buildings, and new machinery for speeding up construction and for lessening its cost. Our age has seen the introduction of reinforced concrete, of structural steel, of mechanical heating and ventilating systems, of new electrical appliances and apparatus, and of all sorts and conditions of labour-saving devices ; the mechanisation both of buildings and the building industry proceeds apace. The effect of these developments upon the economics of building is a matter of close concern to the quantity surveyor, or the technical accountant of the building industry, as he has been aptly called. It makes increasing demands upon his professional knowledge and his ability to keep up to date with the almost daily introduction of new methods and materials. This in turn means that the education and training of the young quantity surveyor of to-day must cover a field far wider than was necessary in the case of our fathers at the end of last century.

Essential as are his services to the cause of good building, the work of the quantity surveyor, even to-day, is less understood and receives less public recognition than that of most other professions. That perhaps is partly due to the fact that public recognition is apt in these days to be regarded as synonymous with publicity ; while publicity for any profession, so I am told, depends upon its opportunities for providing touches of human drama and of physical or emotional " appeals " of all kinds. There is admittedly no place in flag headlines for quantity surveyors as such ; they do not deal usually with the type of situation which gives our brethren in other professions a place in the news ; but though our work is severely technical, and therefore probably unsatisfying to the mass emotionalism which modern publicity both creates and feeds upon, it might well receive wider recognition than in fact it does.

The quantity surveyor, after all, is indispensable to the

building owner, the architect and the contractor of a building of any size. The architect says to us "Here is my conception of the building that I wish to build ; it is now for you and the contractor to shape it into the form which I have conceived. Much stone, steel, timber, many bricks, many slates, many tiles, and other materials, and the labour of many men, will be required. How much or how many I do not know ; but I must be told, and told quickly, so that the builder in turn may tell me the payments he will require for those materials, and for the labour of fashioning them to my design. Of each and all I must know the amounts, the quantities ; take my drawings and from them measure out those quantities. And when you have measured them, note them down in a list, which shall be called your bill of quantities, so that it may be sent to the builder."

Vis-à-vis the public, we are not, it is true, so fortunate as the architect, the poet, the musician or the painter, whose works stir the deeper human emotions ; but we are, nevertheless, the close associate of the disciples of the Mother Art of Architecture, to whom we think we are essential for the reasons I have just described. Yet how seldom does one see any reference to the quantity surveyor of a new building when it is described in the papers, even the technical papers, though it is quite usual to see the names of the sub-contractors given in full ! Surely it is not too much to ask that a similar privilege might be extended to us. And surely also it would be a good thing from all points of view if the name of the surveyor who had prepared the quantities were stated in every advertisement calling for tenders from builders.

Mention of tenders reminds me that it was the common practice in my young days for the estimates to be opened and each one read out in the presence of the competing contractors. That custom, I am sorry to say, has fallen into disuse to-day. Contractors have often complained to me that nowadays, in many cases, they never see a list of

tenders at all. That, I think, is manifestly unfair to firms who have prepared their estimates at a considerable expenditure of time and money.

I do not think it is realised how much the quantity surveyor contributes to the general fund of knowledge upon which the profession, as a whole, is founded. His work, I suggest, is in no small measure complementary to that of the other branches of the surveyors' profession.

It is sometimes said that quantity surveying is something quite distinct from valuation, land agency and estate management, or, at any rate, that it is a profession within a profession with separate and distinct features of its own. Superficially at any rate there is a good deal to be said for that view, and it is a view which is adopted in more than one foreign country, notably in America, where there are separate professional societies for estate managers, estate agents (or "brokers" as they are called over there), valuers (or "appraisers") and quantity surveyors. The British form of organisation, however, which embraces all these (and building and mining surveyors as well) into one society—our own—is based on a different school of thought altogether, namely, that all these classes of persons are really branches or sections of a single, though loosely knit, profession, with two important features more or less common to the work of all. Those common features are the art of measurement and the art of valuation, both supremely characteristic of, and peculiar to, the work of a surveyor.

All of us are measurers and valuers, though some of us measure and value for different purposes and from a different angle as compared with others. The valuer is concerned with values of land and of buildings as they stand, whether old or new; and measurement is one of the methods which he adopts for ascertaining value. The quantity surveyor measures the materials and labour which are put into the construction of new buildings; and where, in the course of building, variations are made from the original drawings, he is called in to measure and value

such "extras" and "omissions," so that the builder's account may be fairly adjusted as between him and the building owner.

It is here that the qualities of impartiality and fair-mindedness are called for in the quantity surveyor, for his valuation must be made judicially as between payer and payee, between whom he is really acting as a quasi-arbitrator. It is for him to see that the building owner pays no more and the contractor receives no less than is due. I regard it as a tribute to our branch of the profession that the "Standard Form of Building Contract," issued in 1931 under the sanction of the Royal Institute of British Architects, the National Federation of Building Trades Employers, and the Institute of Builders, and now in general use for private works throughout the country, expressly provides that the quantity surveyor's valuation of variations on contract shall be accepted by both parties to the contract. That provision is surely a mark of the confidence which architects and contractors in general repose in the skill and impartiality of the quantity surveyor.

As measurers and valuers, therefore, we are on common ground with our fellow-members in other branches. As members of the same Institution we have learnt much from them and can perhaps learn more by making greater use of our opportunities for exchange of knowledge. Perhaps also there is something which our fellow-members in other branches can learn from us ; for example, though I pretend to no knowledge whatsoever of valuations for rating, I will be so bold as to suggest that when valuing rateable hereditaments on the cost of construction—the "contractor's principle" I believe it is called—the rating surveyor may have something to learn from the technical knowledge and methods of the quantity surveyor.

There still exists among members of the public not fully acquainted with our work the idea that the quantity surveyor waxes fat on the exorbitant fees which, if he were not employed, would remain in the pocket of the employer,

seeing that a builder is always prepared to submit a tender without quantities. This criticism shows a want of appreciation of the facts. The common practice eighty or a hundred years ago, when the professional quantity surveyor was practically unknown, was for quantities of a somewhat primitive kind to be prepared in the office of each competing contractor. This system failed to produce tenders on any uniform basis, and was abandoned both for that reason and because its inherent wastefulness added unnecessarily to the cost of building. The object of employing a professional quantity surveyor is to avoid the defects of that bad old system, to secure uniformity in the data presented to each competing contractor, and to secure for the building owner the full benefits of competitive tendering, together with the satisfaction of knowing that variations on the contract will be adjusted on a scientific and equitable basis and that disputes and delays will be reduced to a minimum.

It must not be forgotten that while the consideration of building costs is a matter both for the quantity surveyor and the builder alike, the former examines the question from a strictly professional standpoint as a technical accountant without control over the contract operations, while the latter, as an *entrepreneur* who is concerned with the handling of labour and materials commercially, necessarily views it in the light of profit possibilities.

I have heard it charged against quantity surveyors that the detailed method of measurement employed by them has the effect of increasing the total of the tender. That is an entire misconception. Increased detail does not increase the cost, either directly or indirectly. Such detail is required to give the builder the necessary information as to the work involved, and, having served this purpose, is not priced in many cases—or, where priced, only in the proportion which it bears to the complete item.

It is gratifying to observe that the need for the services of the quantity surveyor is becoming more and more widely recognised. Few buildings—those put up by estate

developers perhaps excepted—which cost more than, say, £2,000 are erected without the preparation of bills of quantities.

The vastly improved status of the quantity surveyor in recent years is symptomatic of the improved relations between the various partners in the building industry, architects, surveyors, contractors, sub-contractors and operatives. That, I think, is directly traceable to the opportunities of meeting round a table which are afforded by joint meetings of all kinds, the various liaison committees, by the growth of the conference habit as a means of conciliating differences of all kinds, including disputes as to labour, wages, hours and conditions of employment, and last but not least by the formation of the Building Industries National Council, which body I should like specially to congratulate upon the immense amount of useful work it has so successfully undertaken during the three-and-a-half years of its existence.

We have learnt at last that the only satisfactory way of conducting negotiations is round a table. Lengthy correspondence is apt to create an atmosphere which, to say the least, is not calculated to effect a speedy settlement. The ability to appreciate the other man's point of view—the alpha and omega of all negotiations—can only be obtained by personal contact.

Mention of labour would be incomplete without acknowledgment to the National Federation of Building Trades Operatives, whose lately retired President (Mr. Barron) and its Secretary (Mr. Coppock) by their tact and diplomacy in the somewhat delicate situations which arise from time to time are personally responsible in great part for the cordial relations which exist between masters and men in the building industry at the present time.

As regards the status and functions of the quantity surveyor, the old order changeth, giving place to new. Architectural practice, in many instances, is apparently tending towards specialised design upon which the sur-

veyor's expert advice and counsel are becoming more and more essential. As a profession we shall be wise if we accept the situation and seek to qualify ourselves for that place in the building industry which I regard as our ultimate destination.

Here I should like to offer a word of advice to architects, which I hope they will take in the spirit in which it is tendered. We are sometimes told that a building owner declines to incur the expense of employing a quantity surveyor. When I hear this, I know that, in nine cases out of ten, it is because it has never been explained to him that, if he does not employ a surveyor, quantities will have to be taken out nevertheless, and by the builder who, naturally, will include the cost of preparing them in his tender. The building owner will pay for the quantities just the same, though the payment will be hidden away in the contract sum. If building owners would realise that fact, and the obvious advantage to them of having quantities prepared by an expert who has devoted his whole life to this work, I think we should hear very little of this disinclination on their part.

If, with the concurrence of the architect, the quantity surveyor were consulted in the earlier stages with a view to his giving a considered and expert forecast of the probable cost, and the benefit of his experience and advice regarding procedure, materials and the like, there would be a greater appreciation of the services which the professions and the trade can combine to render to a building owner. In particular much would have been done to lay the dread bogey of "extras" and to conjure up a feeling of mutual confidence in its place.

The vexed question as to whether quantities should, or should not, form part of the contract is still raised from time to time, but if they are properly prepared it does not matter, theoretically, which form of contract is adopted. The chief argument that can be advanced in favour of not making quantities part of the contract is that the building owner is

aware of his total commitment. That is true, but I have yet to learn of a contract being carried through without variation, either by the architect or the building owner himself.

I hold the view that in fairness to all parties quantities ought always to be made part of the contract. The builder has no choice in the selection of the quantity surveyor, and has no idea of his identity until he looks at the back of the bills of quantities. The late Mr. Hardcastle, one of the most eminent quantity surveyors of his generation, in a paper he read at the Institution sixteen years ago said: "The simple and rational course is to make the quantities part of the contract, and the surveyor, like the architect, an agent of the building owner, who is then liable to the contractor for the acts of the surveyor as he is for the acts of the architect, each of whom in their turn is responsible to their employer, the building owner." I need hardly add that quantity surveyors should insist, in all cases in which quantities form part of the contract and whether called upon to do so or not, on checking the pricing and moneying out of the contractor's bill of quantities before the contract is signed.

Most contracts contain a clause to the effect that no variation order will be admitted unless signed by the architect, but even to-day that provision is often more honoured in the breach than the observance. Contractors should insist on compliance with this clause, as in the event of an order for any such work being disputed the quantity surveyor has no power to measure it. His authority, moreover, is limited to the terms of the contract, and he must not assume a responsibility that he does not possess. All claims by the builder should be submitted to the architect with a report advocating their admission, in full or in part, or their rejection, as the case may be.

Cases have occurred in my experience, and no doubt in that of many of us, in which the question arose as to whether the architect had given a variation order during a contract

or after its completion. The 1931 Standard Form of Contract, and, indeed, every form of contract I have seen, contains a maintenance clause under which the builder is responsible for remedying all defects within a period named therein. I want to make it clear that the completion of the contract, for this particular purpose, is the date on which the building is handed over to the building owner. To orders issued during the maintenance period, the conditions and prices of the contract do not necessarily apply, and the execution of the work in question forms an entirely fresh transaction for which the builder, unless he specifically undertakes to carry it out at contract rates, is entitled to be paid a fair market price. Needless to say, orders given by the building owner direct, and not through his architect, are entirely outside the contract, and should not be dealt with by the surveyor unless he is expressly instructed by the building owner to do so.

The quantity surveyor is, in my opinion, the person best qualified to write the specification, and now that the Royal Institute of British Architects has published in its Journal a paragraph to the effect that, if the architect employs the surveyor to carry out this work, he should pay the latter for doing so, the principle which our junior members had been advocating for some time past has now been established.

Standardisation in all branches of industry has been well to the fore of recent years, but I think that quantity surveyors may claim to be the first to standardise at least a portion of their professional work. I notice that, as long ago as 1914, the late Mr. William Woodward, in a discussion on a paper by the late Mr. George Corderoy—two names always held in affectionate remembrance at Great George Street—said: "All I can say is I hope standardisation will never occur in bills of quantities. It can't be done I am afraid, if adopted, it will interfere very seriously with the profession of a quantity surveyor." Much water has flowed under the bridges since then, and standardisation in the form of "The Standard Method of Measurement" is

now an accomplished fact, and has been hailed on all sides as the most epoch-marking event in the history of our branch of the profession. To those members of the building and our own profession who sacrificed so much of their time and gave so ungrudgingly of their invaluable knowledge and experience to the compilation of the first edition and the first and second revisions—the latter being so comprehensive as to constitute a practically new work—we owe a very real debt of gratitude.

Having succeeded, I hope, in removing some of the misconceptions which are prevalent about the work of a quantity surveyor, let me forestall the possibility of another by emphasising that the Standard Method of Measurement does not convert our work into mechanical rule of thumb. It does no more than ensure that measurements shall be made in a uniform way ; and in no sense whatsoever does it do away with the need for professional skill and accuracy in making the measurements themselves. Prior to the publication of the Standard Method, individuality of method obtained in every quantity surveyor's office, with the result that disputes were of frequent occurrence. To-day, with uniformity of method, differences of opinion, I am glad to say, are few and far between.

Quantity surveyors are sometimes asked to make an inclusive charge for the preparation of the bills of quantities, and for the settlement of variations on a contract. In some cases even, they are required to quote a fee which includes the cost of reproducing copies of the bills. Although a quantity surveyor may be compelled to quote fees on that basis if the client insists, it is an arrangement to which, as professional men, we strongly object because of the gambling element which it introduces. With such feelings I am sure that the Council of the Institution will entirely concur. A quantity surveyor should not be asked to quote a fee for work the extent of which is unknown or undetermined. Variations on a contract are beyond his control, and may be caused by circumstances which were wholly

unforeseen when the quantity surveyor received his instructions. Running water, for instance, may be met with in the foundations, necessitating possibly sheet-piling and additional depth, and that is but one out of many of the unexpected causes of variations.

I shall be told, I know, that a building owner likes to know the full extent of his commitments. Even so, it is neither right nor fair that the quantity surveyor should be expected to place himself at the mercy of those in control of the building, when he knows quite well that the latter afterwards can decide, if they wish, to introduce variations which are nothing less than wholesale changes in planning or methods of construction ; in which case the quantity surveyor will be compelled to carry out a large amount of new measurement which he did not, because he could not, foresee or allow for when quoting his fee.

To insist upon a fee being quoted which includes lithographer's charges for reproducing the quantities is even more indefensible. Lithography is a trade expense purely and simply, the cost of which depends entirely on the size of the bills and the number of copies required. It is next to impossible to estimate the former, and the latter is seldom known until the surveyor's work is nearly done—presumably long after his fee has been agreed.

Quantity surveyors occasionally find—usually in a contract of employment issued by some local authorities—a clause under which only a proportion of their fees for preparing the quantities is payable on signing the contract, or on the issue of the first certificate, as the case may be, the balance being left over until the building is completed. I have always insisted upon full payment of my firm's account not later than by inclusion in the first certificate. It is only fair to say, however, that when I have objected to such a clause on the ground that the quantities should be paid for as soon as they have been prepared and issued, and that in this respect there is a distinction between the

work of a quantity surveyor and an architect, it has been at once deleted.

There is another point to which I shall be expected to refer, and that is the custom of inserting the amount of the quantity surveyor's charges in the bills of quantities. It is a custom which admittedly may seem strange to the layman, who imagines not unnaturally that the quantity surveyor is being paid by the contractor. In fact, however, the contractor is merely in the position of bailee, or, in other words, the channel through which the quantity surveyor receives his fees from the building owner. Old customs die hard, and this particular one dates from the days when our profession was in the chrysalis stage of its evolution. It originated from the ancient practice by which a number of contractors employed a surveyor to prepare quantities for them to price in competition, the successful contractor making himself responsible for the surveyor's fee and including it in his tender. This course was defensible, for the cost of the preparation of the bills of quantities was an integral portion of the cost of construction, and its inclusion in the contractor's tender became, in consequence, a common practice which still survives. The custom is, however, less general than it was. His Majesty's Office of Works, the London County Council, and most local authorities throughout the country, pay the quantity surveyor direct. In private practice, too, the building owner to-day generally arranges his fees with the quantity surveyor if the estimated cost of the building is of any considerable size ; and if he does not, the quantity surveyor, when appointed by the architect, should take steps to see that the building owner is made aware of the amount of his charges before the preparation of the bills of quantities is put in hand. The building owner of to-day, quite rightly, takes a far more intelligent interest in the building he proposes to erect, the architect and quantity surveyor whom he proposes to employ, and the various contractors whom he wishes to tender, than was the case

half a century ago ; and that being so, I venture to prophesy that the old custom will gradually die, and that we shall be receiving our remuneration direct from the building owner in a comparatively short space of time.

I turn now to a delicate question, and that is the desirability or otherwise of combining the professions of architecture and quantity surveying in one and the same person or firm. In London and in most parts of the south of England it is rare to find an architect who practises as a quantity surveyor or *vice versa*, but it is otherwise in the Midlands and the north.

I should have thought that no architect would have wished to practise in the dual capacity. I should have thought, too, that the mind of an artist, designer and creator would have recoiled from the mathematics of measurement, valuation and accountancy, and the other laborious exactitudes of our profession. But in a minority of cases it does not, and the fact surprises me. It surprises me even more that that minority should have failed to realise that if the functions of an architect and a quantity surveyor are performed by the same person, the judgment and decisions of that person on some of the matters which arise in the course of contract operations are, from a purely legal standpoint, open to objection on the ground of bias, for reasons upon which I need not enlarge.

It is in the interests alike of the building owner, the contractor and the architect himself that the quantity surveyor should be an independent person. The advantages of that arrangement, which was commended by Lord Russell of Killowen in the case of *Torromé v. Scott*, are so obvious that I am not going to stress them further to-night.

I deprecate very strongly the payment of fees which do not adequately remunerate the quantity surveyor for the responsible work he carries out. A scale of fees for all quantity surveying services is laid down by the Institution for the guidance of the profession and the public. Given that scale, I enjoin upon every quantity surveyor that

he gives of his very best, and nothing less, by way of service to the building owner by whom, through the architect, he is employed.

The question of whether there exists any copyright in bills of quantities was referred by the Institution to Counsel on a case submitted to the Quantity Surveyors' Committee some eight years ago. In the course of his opinion Counsel said: "It is clear to my mind that the preparation of the bill of quantities for the purpose of one particular scheme would give the architect or builder employed in relation to that scheme an implied licence to multiply copies for the purpose of that scheme. The only question is whether such licence could extend to other schemes of a similar kind. In my opinion it does not, and the architect or builder who re-published the bill of quantities for use in connection with some other scheme would commit an infringement of copyright unless he could prove—which I imagine is improbable—that there was a general custom in the profession that a bill of quantities made for one scheme could be used for another scheme."

It is interesting to note that three years after this opinion was given, copyright in bills of quantities was recognised for the first time by the Court in the case of *Watson and Carter v. Cooper*, 1931.

The following question was also put to Counsel:—

"If a bill of quantities is published bearing the name of a quantity surveyor and is in fact altered, has the quantity surveyor any cause of action?"

This question, Counsel admitted, was one of some difficulty, but said: "In my opinion there is a cause of action in cases of this kind on the ground of libel. . . If it were shown that the defendant had not only issued such a mutilated copy of the author's work in the past, but that there was reasonable apprehension that he might do so in the future and that the work was of such a character as to prejudice the author's reputation, there would be, in

“ my opinion, a good ground for an injunction, and, in any event, on these facts, there would be ground for damages which, however, might be merely nominal.”

Another legal point which sometimes arises in practice is a request by a builder, or building owner, to be allowed to see the surveyor's dimensions. It has been the custom of the profession to hold that the dimensions are the private property of the quantity surveyor and that he has the right to refuse to produce them. I am not sure, however, that in the event of either of the parties claiming their production in a Court of Law, the Court would decline to accede to his request, and I am bound to say that I see no reason to refuse access. If the dimensions have been properly taken off, the surveyor has nothing to fear, and, in any event, a refusal is bound to create an atmosphere of suspicion which it should be his aim to avoid. He is, in my opinion, entitled to insist that they do not leave his possession, but are inspected at his office ; and I also think he would be acting neither logically nor wisely in refusing to supply a copy of them to builder or building owner upon payment.

Approximate estimates loom largely in the quantity surveyor's practice to-day. Every building owner, quite naturally, wishes to know the approximate expenditure to which he will be committed, and perhaps no item of professional work depends more on experience than does this. The Institution has been asked on more than one occasion to consider the advisability of publishing a memorandum on the basis of prices per foot cube for various classes of buildings, but on the advice of its Quantity Surveyors' Committee has always declined to do so. I know there are two schools of thought on this question, but, speaking personally for a moment, I entirely agree with the Committee that the issue of any such memorandum would be against the best interests of the profession, and would be fallacious and misleading unless so hedged in by restrictions as to make it useless. Each case must be considered

on its merits, and all circumstances affecting the price taken into consideration. In cases of doubt rough quantities should be prepared and priced—a method which is much the safest if time permits and if the quantity surveyor is not required to give the cost in half an hour over the telephone.

Another field in which increasing use of the quantity surveyor's knowledge and experience is made is that of arbitration. In the majority of building disputes a difference has usually arisen upon the amount due to, or claims for additional payment made by, the builder under a particular contract; and many of the points raised need all the experience and judgment which the surveyor can bring to bear. In his desire to deal fairly between the parties an arbitrator is sometimes called upon to give a decision at variance with his sympathies; but there is no place for sympathy, I am afraid, in the equipment of a good arbitrator. The essential ingredient is technical experience projected through the prism of an impartial and judicial mind.

A point of difficulty frequently arises in stating a case on questions of law. I suggest that the opposing solicitors (or Counsel if retained) should, if possible, be asked to prepare, and agree, the exact wording of the case on which the decision of the Court is required. The arbitrator should then send it to his own solicitor to quote such evidence as is necessary to enable the Court to arrive at a decision on the points of law involved—a by no means simple matter, and one which the quantity surveyor would be ill advised to attempt in the majority of cases.

And now I want to make a passing reference to a trade which is intimately concerned with our work—that of the lithographer. Surveyors' draft bills are not usually written in copperplate, and the fact that errors in lithography, &c., both before and after the proofs have been read over in the surveyors' office, are so few and far between, is a great tribute to the care and efficiency of the lithographers. I

am glad to have this opportunity of acknowledging our indebtedness to a trade which has served our branch of the profession so well.

My address would be incomplete without reference to the amalgamation which, after more than three years' negotiations, has recently been approved, subject to ratification by H.M. Privy Council, between the Faculty of Surveyors of Scotland and the Institution—an amalgamation which is warmly welcomed by the Council and the Quantity Surveyors' Committee. The Faculty—membership of which is entirely confined to quantity surveyors—was formed by a fusion of the Glasgow Institute of Measurers, founded in 1881, and the Society of Ordained Surveyors, founded in Edinburgh in 1899. It was incorporated by Royal Charter in 1913, and is the only body of surveyors, other than the Institution, enjoying that distinction. By this amalgamation the quantity surveying branch of the profession is consolidated under the *aegis* of the Chartered Surveyors' Institution, with liberty to the Scottish Branch to deal with all matters appertaining to quantity surveying in Scotland. By reciprocal membership on the respective Committees in England and Scotland unification of action and control is assured. On behalf of the Institution I assure our brother quantity surveyors in Scotland that the heartiest reception awaits them at Great George Street, where we hope to have the pleasure of seeing them as often as they can conveniently make the journey.

While on the question of the amalgamations in Scotland, I feel that I may legitimately make one departure from the subject of quantity surveying which is the main theme of this address. I should like to say how pleased the Council are that the long negotiations—considerably longer even than those entailed by the amalgamation with the Faculty—for the amalgamation with the Scottish Estate Factors' Society have, within the last month, been brought to a satisfactory conclusion ; and that as soon as the ratification of H.M. Privy Council has been received, this

amalgamation will also become an accomplished fact. The Scottish Estate Factors' Society is a body well known in Scotland, where it is fully representative of the land agency branch of the profession ; and chartered surveyors will extend as hearty a welcome to the Scottish estate factors who join the Institution as my brother quantity surveyors will extend to members of the Faculty of Surveyors of Scotland.

To those who think of entering the quantity surveying profession I would like to offer a word of advice. With no desire to discourage them in any way, I am of the opinion that a boy without the capacity to " stick " the first three years of his office life should choose some other outlet for his activities. The work during this period is mainly confined to abstracting and billing, and the constant repetition is, I frankly admit, apt to become monotonous.

During the early years of his apprenticeship to the profession the young entrant will be studying for the Intermediate and Final examinations of the Institution, which means giving up most of his evenings. Apart from the Preliminary examination, the embryo quantity surveyor, in addition to quantities and analysis of building prices, in which he has five papers to answer in a total period of fifteen hours, is examined in land surveying, levelling, draughtsmanship, mensuration, book-keeping, constructive and working drawings, specifications, drainage and sanitation, heating and ventilation, building materials, steel and concrete construction, the writing of a technical report, law of dilapidations, law of arbitration, and the Public Health Acts or the London Building Act. From this somewhat formidable list it is, I think, obvious that our branch of the profession exacts from those who desire to practise it several years of arduous and intensive study.

Another point which young men who contemplate entering it should remember is that there is no such thing as normality in a quantity surveyor's practice. We are either working at extreme pressure, when

periods of very long hours are required of our staffs, or we are comparatively quiet when the work is hardly sufficient to keep them employed during ordinary office hours. In times of economic depression the building trade is one of the first to suffer, and it suffered grievously in the dark days of 1931 and 1932. At that time, and as a result of the stoppage of building, there was much unemployment among assistants, particularly among the freelances who, as is common in our branch of the profession, were not on the permanent staff of any firm, but made it their practice to assist one firm after another in times of pressure. Because of our dependence on the building industry for our livelihood, and of the fact that our practice is very specialised, we are more liable to these financial "ups and downs" than is perhaps any other branch of the Institution membership.

In this connection I gratefully acknowledge, on behalf of our quantity surveying members, the invaluable help rendered by the Committee of the Chartered Surveyors' Benevolent Fund. Many of the cases brought before them were of extreme distress, and I am not going further than is justified if I say that, without this help, the situation would have become tragic. To-day we are, fortunately, in the happy position of being very busy; in fact, though I can look back over nearly half a century, I have never known the profession so full of work as it is at the present time.

Reference to the economic crisis of 1931 gives me the opportunity of urging the Government of the day not to repeat the disastrous policy of their predecessors during that dismal period. The effect of the letter circulated by them to public authorities instructing them to curtail all public work was disastrous to the building industry and of no financial or economic benefit to the country.

Building prices fell during that period to a lower level than at any time since the War, and building contractors found themselves compelled to accept contracts at cost, or, even under, in order to maintain sufficient employment for

their workmen and staffs. That surely was the time when the State should have stepped in and turned the prevailing economic conditions to its own advantage by initiating a judicious programme of necessary public works. Had that policy been adopted, the building industry and the State would both have benefited, and thousands of good workmen would have been kept in self-respecting employment and saved the indignity and demoralisation of the "dole."

In conclusion I would say to the younger members of the profession:—

You are members of an honourable profession ; be careful to cherish its reputation and your own.

Neglect no opportunity of service to the architect or building owner, whether in the initial stages of a scheme or during the contract operations. In reason set no limit to your sphere of usefulness. Give of your best, and do not regard the issuing of bills of quantities as the beginning and the end of your responsibility. You are not machines for turning out quantities ; you have other important professional functions. Remember that phrase in the Institution's scale of charges, "acting in the capacity of a "quantity surveyor," and see that you do act up to it.

Do not think of the time spent in the service of your client in terms of pounds, shillings and pence. Do not worry about its effect on your fees. You will be rewarded with the good will of those who have employed you, and the probability, if not the certainty, of further work in the future.

And lastly,—

Play cricket ; for in England and where English is spoken cricket is not only a game, it is an attitude to life. As a game it is good ; as an attitude to life it is better. Play cricket in your professional life as well as on the playing-field and you will not regret it.

I have lived long enough to see the profession of quantity surveying and the recognition of the quantity surveyor increase by leaps and bounds ; and it is because, even now,

he is not quite where I want him to be, and because I know that the goal we have set out to reach is appreciably nearer with each year that passes, that I have asked for the broadest and most generous recognition of our ever-increasing responsibilities.

Mr. HARRY M. STANLEY (Past-President) said that by old custom it was the privilege of the immediate Past-President to propose a vote of thanks to the President for his Inaugural Address. He did not know quite how that custom arose ; possibly it was due to the fact that the immediate Past-President was the individual who had most recently had experience of what it really meant to prepare an Inaugural Address in such a way that he could at least hope that it would be both instructive and interesting to his audience. That, he thought, all the Presidents had found was a difficulty which confronted them, and a great deal of time and trouble were necessary in preparing the Address. He wished to assure the President at once that he had completely succeeded in his effort.

He had found the Address extraordinarily interesting and illuminating, and he had gained a very great deal of information which he had not before possessed. He was quite sure that, in saying that, he was speaking on behalf of all those present who had not had the good fortune to be trained in the quantity surveyors' branch of the profession.

All who had had the good fortune to know John Medows Theobald—and they were many—especially those who had for long been associated with him and his work on the Council, had recognised that he had the ability and all the qualities necessary to enable him to fill admirably the chair which he now graced, and he thought that that judgment had been borne out by the thoughtfulness and care with which the President had prepared the Address which he had delivered that evening.

He might perhaps claim some remote association with quantity surveying, that association relating to the occasions when he had been fortunate enough to deal with land which was subsequently covered by the art of the architect and had to be priced out and dealt with later by the quantity surveyor. If it would not be considered presumptuous on his part, he would like to express his agreement with the President that it was advisable that the quantity surveyor should be called in in the first instance, when the building owner wanted to know how much he was likely to have to spend for a given building. He believed that architects

were very largely doing that now. As the President had said, the building owner now took a much more intelligent interest in the building he was going to put up than he used to take years ago, and the information given to him as to cost should be sound and good. The principle of a rough cube was not always accurate. One seldom got the exactly right comparison, and there were such differences in the construction and the quality of work, and so forth, that he sometimes thought that cubing did not give the building owner all the information which he ought to have before he decided to build.

There was one point in the Address which he came across in his general practice and to which he would like very briefly to refer. He thought the old custom, which died hard, of the quantity surveyor being paid through the medium of the contractor was one that might very reasonably be altered. He was glad to hear that the President agreed with that and expressed the view that the custom would shortly be altered. His own reason for desiring the change was this. He had very often been asked by the building owner, his client, when the question had arisen "What does this mean?" and it gave to the lay mind the idea that there was some connection between the quantity surveyor and the contractor which did not exist at all. The lay building owner said "I appoint an architect, and I appoint or select, "either directly or more generally through the architect, a "quantity surveyor. Why should I pay one directly and the "other indirectly?" and it was very difficult to answer that question. He could not help feeling that the status and prestige which the quantity surveyor had reached would be further enhanced if he received his payment direct from the client, and he could not see that it would affect the judicial position which the quantity surveyor held in being, as the President had put it, a quasi arbitrator between the building owner and the contractor, seeing that justice was done as between the payer and the payee. Personally he would be very glad when the time came when the quantity surveyor was paid direct by the building owner, in the same way as the architect was now paid.

He had very great pleasure, on personal grounds, in proposing a most hearty vote of thanks to the President for his very illuminating and careful Address, and on behalf of the members he wished the President the best of health and every blessing during his year of office.

Mr. ROBERT COBB (Senior Vice-President) said that according to ancient custom it was his privilege as the Senior Vice-President to second the vote of thanks to the President for his Address.

The President had referred to the quantity surveyor in the old days as a chrysalis, but that evening the members had listened to a most illuminating and instructive Address, and a very fine butterfly had emerged from the chrysalis.

The President had referred to the good result of conferences round the table. He entirely agreed with the President in that.

He knew that the natural tendency was to consider the quantity surveyor's work as mechanical and not able to compete, in the deeper human emotions, with the art of the architect or the artist or the designer, but the President's Address that evening would add very considerably to English literature, and the proper place for it was in the front shelves of the Library of the Chartered Surveyors' Institution.

In conclusion, he wished, as an agriculturist, to add a few words to what the President had said as to the amalgamation with the Scottish Surveyors. For many years Scottish farmers had come from the north to the south and had done good to agriculturists in the south by showing them the way to farm, and he thought it would be a great advantage to surveyors in England to have some of their Scottish colleagues coming south. He hoped they would be in the Hall of the Institution and possibly in the Chair which the President now occupied. He had great pleasure in seconding the vote of thanks.

The motion was then put and carried by acclamation.

The PRESIDENT, in reply, said he was very grateful to the proposer and seconder for their kind remarks and to the members present for the patient way in which they had listened to his Address. He knew that many of them were not quantity surveyors, and he appreciated the compliment they had paid him by coming to listen to an Address on a subject which, to a man who was not a quantity surveyor, was about the driest subject on which anyone could write.

He was also very grateful to the members for their reception of him when he entered the room; it would be an enormous encouragement to him during the next six months.

The meeting then terminated.

PAPER No. 571.

TOWN AND COUNTRY PLANNING ACT, 1932.

TOWN AND COUNTRY PLANNING AS AFFECTING THE PRIVATE LANDOWNER

(A)—FROM THE POINT OF VIEW OF A PRIVATE PRACTITIONER.

By C. F. Stone, F.L.A.S. (Chartered Surveyor),
(*Special Town Planning Diploma*).

*Paper to be read at the Ordinary General Meeting of the
Chartered Surveyors' Institution on Monday, 7th
December, 1936.*

Many books, articles and papers have already been written on this subject, dealing with the actual provisions and technicalities of the Act and general procedure, but the object of the discussion to take place to-night which I have the privilege of opening up is to deal with points raised during the actual working of the Act, particularly problems between the landowner and the local authority carrying out the provisions of the Act. Personally my experience has been with urban and rural district councils and borough councils chiefly in connection with agricultural properties. I have not had to deal with built-up areas to any extent, and will leave other members to bring forward any points or difficulties relating to that side of town planning if desired.

I have always considered that one of the most important principles in town planning is to secure from the commencement the co-operation of the landowners affected by the scheme, particularly where their interests cover a considerable area.

In the early days of town planning it appeared that in many cases the local authorities concerned were inclined

to take rather an arbitrary line and to get too far forward with their schemes before they approached the landowners interested, but recently I think that authorities have in most cases consulted owners in the early stages with a view to co-operation.

In view of the time that must be taken before a town planning scheme is taken through the whole of the necessary stages, particularly in the case of large estates, I think it advisable for landowners to take advantage of the sections enabling them to prepare their own "owner's scheme" and to submit such to the town planning authority with the object of agreeing future development on the best lines in co-operation with the authority.

In this way it is often possible to avoid vexatious delays in developing estates while waiting completion of the town planning authority's full scheme.

If this is not possible it is, of course, open to an owner to apply for a licence to develop a particular portion of the estate under an interim development order, and it is chiefly in connection with such a procedure that I am asked to bring forward some of the owner's difficulties.

Matters have become more complicated since the passing of the Restriction of Ribbon Development Act, 1935, and this Act has caused many alterations in town planning schemes which had already nearly reached a final stage.

I am giving a few examples to show difficulties which may be experienced by a landowner.

An owner some years ago prepared a town planning scheme for a considerable estate which was then situated in a rural district, and in due course he obtained under the seal of the local authority a licence to develop his estate according to an agreed map and schedules dealing with zoning, road widening, new roads and all other matters provided for under the Acts, a considerable area being reserved for private open spaces.

Subsequently, owing to a county revision of boundaries, the owner found his property under the control of five

separate authorities—one borough council, three urban district councils and one rural district council.

Apart from the extra trouble and inconvenience caused to the owner in dealing with five instead of one authority, it has naturally followed that each council, having acquired land on the outskirts of its previous area, have entirely different views as to zoning, public and private open spaces, road development, &c., and the owner is placed in an unfortunate position. This may be an unusual case, but it is an actual one, and it is proving difficult to satisfy each council without seriously affecting the owner's own scheme, which was in effect already approved.

A case showing the difficulties of an owner wishing to develop or sell to a developer: An area is zoned and agreed as residential at not less than, say, six houses to the acre. The only satisfactory way, owing to the nature of the area, is to give access to the public road from each plot, and in the ordinary way there would be no difficulty; but now the owner has to ascertain whether the road is a "classified one," what the ultimate widening will be and the building line, and, in addition to this, he must ascertain how many exits will be allowed from his land on to the public road.

If there is a demand for immediate development for the whole area, the matter can probably be settled satisfactorily after obtaining permission from the town planning authority, but where, as frequently happens, the owner wishes to sell only one or two plots, being uncertain as to whether there will be further demand, can a local authority refuse permission for access to a public road without insisting on the owner submitting a full "lay-out" for the whole area, which may not eventually be developed? And, alternatively, if the owner obtains consent for one or two plots only, must he risk refusal to further applications if he wishes to proceed with development? This point is partly met by the local authority's powers under the Town and Country Planning Act to control the number of entries into

all classified roads, and no compensation is payable to the owner in the event of refusal by the local authority provided the Minister is satisfied that reasonable means of access will be available.

Where a road is not classified, I understand that no question would arise under the Town and Country Planning Act, but under the Restriction of Ribbon Development Act it becomes necessary to ascertain the intention of the highway authority in respect of every road and to apply for permission for access for any plot.

Where the local authority is both highway authority and town planning authority the matter is less troublesome, but where they are separate—*i.e.*, in a rural district—the owner has to obtain the consent of both councils. Sections 7 and 8 of the Restriction of Ribbon Development Act provide for this contingency, and there are also provisions as to compensation in case of refusal, &c.

Another difficulty in which an owner may find himself in town planning owing to the Restriction of Ribbon Development Act is where, owing to standard width and control of land by the local authority within 220 feet of the middle of any classified road or other road (if adopted by resolution), certain areas of land may become impossible for development (*e.g.*, there may be only a narrow strip behind the 220 feet), and zoning previously agreed with the local authority may be impracticable.

I do not propose to discuss the Restriction of Ribbon Development Act further, and make the above references only to show the extra difficulties and work falling on owners in meeting the provisions of the Town and Country Planning Act.

An owner commenced developing to meet the requirements of the town planning authority as to laying out future roads towards a church as a focal point, and sold back land for recreation purposes with access by means of an agreed line of future road to a main road not taken over by the authority. The local authority changed its town planning

officer, and the new official disagreed with his predecessor's views and altered the whole scheme in that area. The owner, having given a right of way over the proposed road, is unable to sell or use it for any purposes, and, being the owner, he would have become liable for the road construction under the Private Street Works Act when the main road was made up. He offered to give the land to the local authority, but they refused it, and he finally gave it to the owner of the recreation ground. As the land had a frontage of 40 feet and adjoining land was selling at £6 per foot frontage, what was his remedy?

I should like to draw attention to the difficulty in which adjacent owners may be placed where another owner makes an application for permission to develop his property on lines which would injuriously affect the first owner's property in a case where the local authority has passed a resolution but has not received the Minister's approval of the scheme. Take the following case as an example:—

Part of a town has been residential and laid out years ago with large houses standing in from 1 to 5 acres of ground. One owner sells his house and 3 acres to a builder, who applies to the local authority for permission to build small houses on $\frac{1}{4}$ -acre plots. It may be that there is no longer an immediate demand for the larger type of house, but development on the lines proposed would seriously affect the amenities of the adjoining owners. On appealing to the Ministry, the adjoining owner is informed that he is not a person interested under the Town Planning Act, and unless the local authority consider his point of view he has apparently no redress. Is this so? The actual case was in 1929 under the old Town Planning Act, but I am not clear whether the Town and Country Planning Act provides for such a case.

If it had been a case of an application under the Law of Property Act, 1925, for modification of restrictions, an adjoining owner would have the opportunity of objecting and putting his case before the official arbitrator.

As an alternative to acquiring an area of land as a public open space where development is likely to take place in the near future (such land, perhaps, being in the centre of an estate), a town planning authority suggests to an owner that he should agree not to build on such land, but only use it for agricultural purposes.

This would entail a loss to the owner, as he would be unable to develop or sell his land for development. If the owner refuses to agree, I presume that the town planning authority would either have to purchase the land or to zone it as a private open space and pay compensation if, after appeal and public enquiry, the town planning scheme reached its final stage and the land remained scheduled as a private open space.

The basis of compensation would appear to be the difference in value of the land as it is with its building or potential building value and its value restricted as a private open space.

AGREEMENTS UNDER SECTION 34.

No doubt many members have been concerned with the settling of agreements between owners and local authorities under this section. It is no doubt a great help to local authorities whose boundaries extend into rural areas to be able to make arrangements with landowners whereby large areas can be scheduled for a number of years as restricted to agricultural and sporting purposes, and there are advantages from an owner's point of view, but it is necessary and desirable to consider carefully the *pros* and *cons* before definitely tying up an estate.

The advantages to the local authorities and general public appear to me to be the following:—

- (a) The voluntary sterilisation of considerable areas in respect of building development relieves the local authority from endeavouring to forecast development on such areas, and enables them,

therefore, to concentrate on the zoning of land which is likely to be developed.

- (b) They may be able to influence other owners to take the same course.
- (c) Such agreements largely prevent "sporadic development" and give the local authority a better chance of dealing with applications for such sporadic development from owners of small properties adjoining, particularly from the point of view of amenities and where there is not likely to be public drainage and other services.

The advantages from the owner's point of view appear to be—

- (a) An owner having settled an agreement on the lines which appear most suitable for his property is not so likely to be disturbed by subsequent town planning schemes, including any re-zoning, by the local authority.
- (b) He can give more weight to appeals which he may find it necessary to make in respect of applications made by adjoining owners to develop on lines which would injuriously affect his own property.
- (c) In the case of an owner's death the valuation for estate duties would be made on agricultural value without prospective building value. (*N.B.*—In a case where part only of an agreed period has lapsed at the time of death, some of the land might have to be valued as in excess of agricultural value subject to the unexpired term of the agreement.)

On the other hand, the disadvantages may be—

That the succeeding owner might wish or be forced to sell part or the whole of the estate, and the value would be reduced where restricted, as there would be no power to develop while the agreement remained in force.

Taking these matters into consideration, I have arranged agreements on the following lines for agricultural estates, and shall be grateful to members for their criticism:—

- (1) Periods have been arranged in perpetuity in one case, for 21 years in others, and subject to a break at 7 or 14 years in others.
- (2) Certain areas adjoining villages, or other groups of houses have been zoned at various agreed densities where development may be possible or desirable.
- (3) Arrangements have been agreed as to possible road widenings.
- (4) Areas have been reserved for sand and gravel digging, &c.
- (5) Full rights to use the whole estate for sporting and for private recreation purposes have been reserved.
- (6) In some cases certain fields have been allotted for possible public recreation grounds.
- (7) The whole of the remainder of the estate is to be used for the period agreed as agricultural and woodland with no restrictions on its use for these purposes, and particularly no restrictions are made in respect of alterations to or erection of farm-houses, buildings, cottages, &c.
- (8) Notwithstanding the above provisions, it has been arranged that the owner can put up an agreed number of private residences on the estate without consent of the local authority, subject only to building by-laws, building lines, &c., on the understanding that at least one acre of land is provided for, either by inclusion as open or garden ground or by the owner agreeing to sterilise sufficient land to make up one acre in the case of each house.

This last clause gives the owner an opportunity of building a few houses without vexatious control.

It is presumably open to the owner to make an application for an order for development on a particular area at any time, and the local authority reserves power in the agreement to make fresh orders.

One difficulty in dealing with town planning of agricultural and woodland estates is the variety of expressions used by the local authorities, and I have had the following suggested in different cases:—Agricultural zone, rural zone, private open spaces (as defined by the Act), deferred zone, village zone, country house zone and undetermined zone.

PRESERVATION OF TREES AND WOODLAND.

Section 46 of the Act is giving rise to considerable thought and discussion, and there appears to be no uniformity in the way in which the matter is treated by town planning authorities.

I am assuming that members are acquainted with the section, which gives power to the local authority to include provisions in their town planning schemes to schedule and preserve individual trees and groups of trees and areas of woodlands.

In the Model Clauses issued by the Ministry of Health clauses were inserted which provided that—

- (1) if a town planning authority is of opinion that any growing tree of a certain height or girth or group of trees ought to be preserved, it can register such tree or group of trees and notify the owner, and when so registered it becomes unlawful for the owner to cut down, top or destroy it except in certain circumstances (one of which is where the tree has become dangerous); the refusal of an application for consent must be given within one month, and there is a right of appeal ;

- (2) a council may register any area of woodland as an area to be protected under the Act, and if any part of an area so scheduled is felled, the owner has to undertake such replanting as would be in accordance with the practice of good forestry, and any decision on this point is to be given by the Forestry Commissioners.

The Model Clauses further suggest with regard to individual trees a limit of 30 feet in height and a girth of 2 feet 4 inches at a height of 5 feet, if it is desired to preserve single trees.

No one, I think, will object in principle to the desire to preserve as many trees and as much woodland as possible where land is being developed, especially in cases where individual trees or groups of trees have become well-known landmarks ; but these sections appear likely to cause undue interference with the rights of owners unless they are very carefully used, and the wholesale scheduling of areas of woodland appears quite unnecessary and an unjustifiable hardship on owners without securing corresponding advantage to the public.

There are several points which, I think, need clearing up:—

- (1) What is a group of trees? In one case I know of the town planning authority first suggested a limit of 50 acres and then reduced to 5 acres.
- (2) What is meant by a felled area? Does it mean clear felling, or can the section be taken to relate to any part of a wood where some trees only are cut?
- (3) Who is to say when a tree has become dangerous?
- (4) What is to be the basis of compensation to an owner if he is not allowed to cut a tree or group of trees?

Some authorities are, I understand, endeavouring to exclude compensation in respect of these clauses, but this appears to me to be outside their powers, as, if injurious affection can be proved, compensation must be payable under Section 18 of the Town and Country Planning Act, as none of the exemptions under Clause 19 appears to apply.

In one case with which I was concerned the local authority included in their scheme a clause as to the preservation of trees, and when the scheme became valid they wrote to owners giving schedules of trees on various parts of the estate, some in fields and some in woods, which they proposed to register, and they suggested labelling the trees, but withdrew their suggestion when the owner assured the Council that steps would be taken to preserve as many trees as possible in the event of development.

In the case of towns and villages and their outskirts I am all in favour of steps being taken to avoid the destruction of trees and groups of trees which some building developers appear to consider necessary before a lay-out can be produced. In many cases preservation could be arranged without cash loss to the owner, but there are cases where an owner should be compensated for definite loss. I have in mind a case where development took place when a park was cut up, and on one road a group of trees occupies practically the whole of a 60-ft. plot. Houses have been built up to each side of the plot and opposite, but no one can build where the trees stand without destroying them. This appears to be a case where the local authority should acquire the plot or pay compensation to the owner for preserving the trees.

Where an area of woodland carries a crop of mature timber and is felled in the ordinary way, and the land has become suitable for building development, a town planning authority should not be able to insist on replanting, or, in the event of their doing so, the owner should be compensated for depreciation in value.

I understand that the whole question of these timber

preservation clauses has been referred to the Forestry Commissioners and the Ministry of Health, and it is hoped that this will result in some uniformity and that a reasonable and definite course will be adopted subsequently.

RIGHTS OF WAY.

Section 11 of the Town and Country Planning Act specifies the various matters which a town planning scheme must provide for, and in particular refers to any of the matters mentioned in the Second Schedule of the Act. This Second Schedule includes "Extinction or variation of " private rights of way, and other easements."

If an owner in submitting an owner's scheme, under Section 6 (b), shows suggested diversions or stopping up of public footpaths and/or granting fresh public rights of way, and such owner receives a licence from the local authority to develop under an interim development order, has the local authority power to agree to such diversions and to include them in their final town planning scheme where *public* rights of way are concerned, and if so shown on the final scheme approved by the Ministry of Health, will such diversions, &c., be valid in law, or will it still be possible for a local inhabitant or parish council to question the legality? The word " private " in the Second Schedule appears to make the matter doubtful.

The difficulty in the ordinary way in dealing with the diversion of footpaths is that the matter has to go through the parish council, parish meeting, district council and county council, and then to Quarter Sessions, but if all the councils in question agree on a diversion, would it still be necessary to go to Quarter Sessions if the agreed diversion is incorporated in the town planning authority's final approved scheme?

PAPER No. 572.

(B)—FROM THE POINT OF VIEW OF A CLERK TO A
LOCAL AUTHORITY.

By **Mr. F. E. Warbreck Howell**
(*Town Clerk, Manchester*).

*Paper to be read at the Ordinary General Meeting of the
Chartered Surveyors' Institution on Monday, 7th
December, 1936.*

1. I have been asked to contribute a paper dealing with the practical aspects of town and country planning as affecting the private landowner viewed from the standpoint of a clerk to a local authority, which is, of course, that of administering the provisions of a scheme.

2. A private landowner is concerned with the entire provisions of the scheme, but it is impossible, within the ambit of a paper of this kind, to deal with the provisions of a planning scheme as a whole, and I propose, as the most convenient way of dealing with the subject under discussion, to first make a few observations of a general character and then to comment on the various points raised by Mr. Stone.

3. In the first place I should perhaps mention that in this paper I shall deal more particularly with "town" as distinct from "country" planning.

(A)—SOME GENERAL OBSERVATIONS.

4. In considering the local authority's or any point of view in relation to town planning, it is essential to get a clear conception of the broad intention of a local authority in preparing a planning scheme.

5. The broad intention in the preparation of a planning

scheme is to secure the sound and orderly development and redevelopment of an area by the proper correlation of all the factors governing the efficient lay-out and development of the land to which the scheme relates. In fact a planning scheme is the only alternative to the perpetuation of existing conditions ; the acute congestion of traffic ; sporadic development and redevelopment ; the haphazard inter-mixing of buildings and lack of any arrangement or order.

6. The Act contains many provisions which have as their object the protection of landowners' interests ; whilst the Regulations made under the Act contain directions to ensure consultation and co-operation between a local authority and landowners in the preparation of a scheme, and the position is such as to ensure that adequate regard is paid to the interests of landowners as a whole, both in the preparation and administration of a planning scheme.

7. It is quite clear, however, that primarily a local authority must regard the scheme from the standpoint of the area as a whole, but, at the same time, proper consideration must be paid to the interests of the landowners concerned, and it will, of course, be apparent that a scheme which will secure the orderly and well-planned development of a town should be of value to landowners.

8. Further, a scheme gives protection to a landowner, which is, I think, important ; the protection takes the form of ensuring that if a landowner develops his land in accordance with the provisions of a scheme, then the local authority will ensure by means of the scheme that the development of adjoining lands shall not be such as to prejudice his development.

9. In regard to the administration of a planning scheme, it will, I think, be found that most local authorities, whilst they must, of course, regard development proposals in relation to the scheme as a whole, are desirous of encouraging and facilitating building development ; and, in

fact, in Manchester, we are anxious to give landowners and builders such assistance and guidance as we can in relation to any aspect of town planning.

10. Whilst, as I have said, it is impossible in this paper to deal with the administration involved in relation to the numerous matters usually contained in a scheme, it may, nevertheless, be appropriate to refer to the more important aspects of development to which attention is directed by a local authority upon proposals for the development of land being submitted to them, all of which, however, must be considered as they arise on merits.

11. These may for convenience be classified under the following headings:—

- (a) Building restrictions in relation to the use of land and buildings to be erected thereon.
- (b) Streets and building lines.
- (c) The height, elevation and space about buildings.
- (d) The preservation of amenities.

12. The principal considerations from which proposals are judged by the local authority may be stated as follows:—

- (a) Whether or not the development of the land is subject to any prohibition or restriction by reason of the absence of the necessary public services or danger or injury to health.
- (b) Whether or not the erection of the class of buildings contemplated is permissible under the zoning provisions.
- (c) Whether or not effect is given to any street or building lines prescribed by the scheme.
- (d) Whether or not the proposals will secure well-planned development in harmony and co-ordination with the development or contemplated development of adjoining lands.

- (e) Whether or not the preservation of amenities will be achieved.

13. It is clear that where, as in the case of a county borough, the council is at once the highway authority, the authority for exercising control under the by-laws with respect to new streets and buildings, and the authority responsible for the administration of planning schemes, it is possible to deal with proposals for the development of land comprehensively and expeditiously.

14. In urban and rural areas, however, delay and perhaps difficulties are sometimes created by the planning authority being the urban or rural district council and the highway authority being the county council for the administrative area. This, however, is due to the statutory provisions governing the functions of the respective authorities, and the position created is unavoidable ; but at the same time it is pointed out that a statutory time limit for the consideration of development proposals is in operation under the Town and Country Planning (General Interim Development Order), 1933, and the Restriction of Ribbon Development Act, 1935, and under the Model Clauses an appeal lies against unreasonable delay on the part of the authority in giving a decision.

15. It is commonly supposed that the control of development by a local authority under a planning scheme is somewhat negative in character, but this is hardly true. Whilst the intention and object of a scheme is to have what has been termed a negative influence upon injurious development, the exercise of such an influence must necessarily result in the carrying out of well-planned development in relation to the area of the scheme as a whole.

16. I am aware that difficulties or differences do occur between local authorities and individual landowners in regard to compliance with planning proposals ; these difficulties are mainly differences of opinion as to what, in

practice, constitutes well-planned development, and also the somewhat natural desire of a local authority to prevent injurious or haphazard development. These difficulties, however, do not necessarily or often arise between the authority on the one hand and the landowners in general on the other, because in our experience in Manchester we almost invariably have support to a greater or less extent in individual cases for our point of view from adjoining landowners.

17. I will conclude these general observations by reiterating the fact that landowners have much to gain by the efficient development of both town and country, and it is obviously desirable that the aim of both landowners and the authority should be to act in the closest co-operation.

(B)—OBSERVATIONS ON MR. STONE'S PAPER.

18. I will now make a few observations upon Mr. Stone's paper, and for this purpose the various matters referred to by Mr. Stone may, I think, with advantage, be considered under the sub-headings which I have used.

Owners' Schemes.

19. The preparation of an owner's scheme is an extremely good practice if such a scheme can be formulated for a suitable area for planning purposes, and link up conveniently with any scheme prepared either by the local authority or by other owners in regard to neighbouring lands.

20. The only difficulty lies in the fact that landowners naturally have a tendency to have regard primarily to their own interests, whereas, in the matter of planning, it is essential to judge the position also from the point of view of the general plan. Subject, however, to this, most local authorities would welcome owners' schemes prepared on sound lines.

Interim Development.

21. So far as concerns the question of interim development, our experience in Manchester is that the procedure under the Act and the Interim Development Order has worked quite successfully. In fact, so far as I can ascertain, no difficulties whatever have been encountered as regards procedure.

22. I should, perhaps, mention that, for the guidance of landowners and builders, an explanatory memorandum in regard to interim development has been prepared and is distributed gratis, and persons contemplating the development of land are made aware of the fact that the Corporation is willing and desirous to facilitate development of land and is prepared to help intending developers with suggestions as to how the land may be best developed or used, having regard to the contemplated provisions of the planning scheme.

23. In Manchester the City Council is, of course, the planning authority, the highway authority and the by-law authority, and therefore all questions appertaining to the development of land can be, and are, dealt with at one and the same time upon the submission of a proposal to develop.

24. Mr. Stone mentions a case of an owner's proposal for development which, when framed, related to land in the area of one rural district, which land, under a scheme for the review of county districts, subsequently fell into the areas of five separate authorities. That certainly is an extreme case, and I sympathise with Mr. Stone. I realise that one local authority is affliction enough from the landowner's point of view, but to multiply by five is rather unkind. I do not think, however, Mr. Stone is right in saying that "it has naturally followed that each council, " having acquired land on the outskirts of this previous " area, have entirely different views as to zoning, public " and private open spaces, road development, &c." I really do not think that this is natural ; I think that the

normal course is for local authorities to co-operate closely with each other with regard to the land on their respective boundaries, and to frame provisions in their various schemes which will enable development to flow on right lines. I am sure that if, on appeal, the Ministry of Health found five local authorities failing to co-operate and each planning up to their boundaries regardless of the proposals of the other authorities, the Ministry would very soon see to it that these authorities were brought together.

Restriction of Ribbon Development Act, 1935.

25. This Act is mentioned by Mr. Stone as having caused an alteration in planning proposals, and this is undoubtedly true, and applies to almost every highway and planning authority throughout the country.

26. The dual purpose of this Act is to prescribe standard widths of road and to control ribbon development, and the authorities responsible for administering the Act are the highway authorities.

27. In regard to standard widths of roads, Section 1 of the Act provides that a highway authority may adopt in respect of any road, or proposed road, which is, or is intended to be, a highway repairable by the inhabitants at large, any of the standard widths which are specified in the Act, namely, 60 feet, 80 feet, 100 feet, 120 feet, 140 feet and 160 feet.

The approval of the Minister of Transport is necessary to the adoption of a standard width for any existing or proposed road, and upon the Minister's approval being given, it is not lawful, without the consent of the highway authority—

- (a) to construct, form or lay out any means of access to or from the road ; or
- (b) to erect or make any building or permanent excavation, or to construct, form or lay out any works

upon land nearer to the middle of the road than a distance equal to one-half of the standard width adopted.

The standard width is the width to which the road, or proposed road, will ultimately be made, and the effect of the adoption of a standard width for a road is to ensure that by controlling the provision of means of access to or from the road, or the erection of buildings, or the execution of works upon the land ultimately required for the construction or widening of the road, a highway authority will be able to prevent anything being done which may interfere with the ultimate construction or widening of the road at its proper width.

28. In regard to the control of ribbon development, Section 2 of the Act contains provisions which are directed to the control of access and building development along the frontages of roads; and in relation to any road which was a classified road on the 17th May, 1935, it is not now lawful without the consent of the highway authority—

- (a) to construct, form or lay out any means of access to or from the road ;
- (b) to erect or make any building upon land within 220 feet from the middle of the road.

These provisions may, with the approval of the Minister of Transport, be applied by a highway authority to roads other than classified roads.

29. Previously, matters appertaining to roads and the control of ribbon development have been dealt with under planning schemes, and therefore the introduction of this Act has necessitated some amendment in the procedure which was previously followed. The Act itself, however, contains statutory provisions to secure co-operation between highway and planning authorities, and it also contains a time limit within which decisions of highway authorities under the Act are to be communicated to landowners.

30. It appears to me that the principal difficulty which has been caused has been due to the introduction of a new policy by the Minister of Transport in regard to the width and lay-out of roads. This has necessitated highway authorities, in conjunction with planning authorities, reviewing the whole of their road proposals in the light of the Minister's new policy, and in view thereof delay has occurred. When, however, standard widths of roads are adopted, there should be little or no difficulty in the private landowner ascertaining the position and arranging the development of the land accordingly.

31. It is, however, pointed out that in rural areas the county council is the responsible authority for road proposals under a planning scheme, and there will be no change of responsibility in this direction, but the fact that certain classes of roads (of standard widths) are now to be taken out of the planning scheme and dealt with under the Restriction of Ribbon Development Act, may cause a little inconvenience, but ultimately, when the roads in question have been dealt with under such Act, the fact will be apparent from a special notation on the map referred to in the planning scheme.

Access to Public Roads.

32. Mr. Stone mentions a difficulty which he has experienced in regard to the planning of access to highways. First of all, it is desirable, I think, to make it clear that restriction of access to highways can be enforced either under the Restriction of Ribbon Development Act, 1935, or under a planning scheme. Clearly, the owner who wishes to develop his land must ascertain what provisions the planning authority or the highway authority propose to make or require for the purpose of limiting access to the highway. It is difficult to deal with the particular points mentioned by Mr. Stone without having all the facts of the case which he, no doubt, had in mind when drawing his paper. As I have said before, these cases must be dealt

with on their merits, and I think that in few cases will it be difficult, if there is reason on both sides for the landowner and the planning authority or the highway authority, to come to an agreement. If, however, in any case that is impossible, the landowner, of course, has a claim for compensation if the restriction is under the Ribbon Development Act or under the Town and Country Planning Act—in effect, if he is damaged.

33. It is, of course, clear that the development of an estate in small plots must necessarily involve the approval of each section according to the scheme and the circumstances existing at the time when the development of the various sections is proceeded with; at the same time the most effective way of arranging the development of an estate is for the landowner to submit in the first place a comprehensive scheme for the development of the whole estate. The local authority will then have the whole of the information they desire.

Change of Policy by a Planning Authority.

34. The question is raised as to the change of policy on the part of a planning authority which necessitated the alteration of the scheme after having approved an owner's proposal for the laying out of land. According to Mr. Stone's paper, the circumstances appear to be that after agreement upon development the owner actually sold certain land and made some agreement as to the line of future roads on the basis of the approval by the local authority. It is difficult, of course, to offer criticism without having knowledge of the whole of the circumstances, but on the information given, it appears to me that the owner should adhere to the proposals agreed with the local authority, and if the matter arose under the interim development procedure, the Minister of Health would not, in such a case I am sure, support the local authority, if the approval had been acted upon and transactions effected.

35. Indeed, one of the objects of the interim development

procedure is to ensure that in a case such as this the owner shall preserve the right to compensation for any injury if he carries out development approved by the local authority, and such development does not comply with the provisions of the scheme subsequently approved.

Development of adjoining or neighbouring Lands.

36. All proposals for the development of lands should be considered in relation to the effect which they may have upon the development of adjoining or neighbouring lands.

37. The aspects with which the local authority will be concerned may be summarised as follows:—

- (a) Ensuring the proper siting of proposed new streets, and, if necessary, making provision for further streets.
- (b) Ensuring that the buildings proposed to be erected will not have an injurious effect upon the development of any adjoining lands.

38. So far as concerns new streets, the Model Clauses provide that before approving plans and sections of a new street submitted by an owner, the local authority shall notify the owner of any neighbouring land the development of which is, in their opinion, likely to be substantially affected by the determination of the site of the proposed street—

- (a) that the plans and sections have been submitted to them ; and
- (b) that before approving the plans and sections they will take into consideration any proposals for the development of such land which the owner may submit to them ;

and the local authority must consider any proposals so submitted.

39. Further, where it appears to a local authority that, for the purpose of securing due co-ordination of estate development in the neighbourhood of any proposed new



street, provision ought to be made for the construction of a street upon neighbouring land in continuation of, or communicating with, the proposed new street, the Model Clauses provide that the local authority may, when approving of the new street, fix a site for the communicating street.

40. It will be observed that the whole object of these provisions in the Model Clauses is to ensure proper regard to the development of adjoining lands, and it is pointed out that the Clauses provide that, if any requirement as to the provision of a new street is made affecting an adjoining owner's land, he may appeal, and all interested parties are entitled to appear and be heard at the hearing of the appeal.

41. As respects the erection of buildings, there are certain cases in which the Model Clauses confer upon a local authority a discretionary power of approval or disapproval (*e.g.*, the erection of shops in a residential zone), and in exercising this discretion the local authority must have regard to the interests of adjoining landowners, and satisfy themselves that the buildings proposed to be erected will not have an injurious effect upon the adjoining lands.

42. Whilst, however, under the Model Clauses a right of appeal is limited in normal cases to the applicant, the Clauses contemplate that where a proposal is made for the consent of the local authority to the erection of certain types of buildings which may be injurious to amenity (*e.g.*, business premises or industrial buildings in a residential zone) the local authority will give notice of the proposal in the Press, and also of the fact that any objections to the proposal will be considered, and the local authority must then give consideration to any objections and notify their decision to the applicant and, in addition, to the persons objecting. In this class of case not only the applicant but also the objectors will have a right of appeal. It is desirable that I should make it clear that this procedure is intended by the Model Clauses to apply only to certain specified types of development in certain zones, and whether or not

it will apply in any given circumstances, will depend entirely upon the actual provisions of the scheme.

43. As regards the case quoted by Mr. Stone of part of a town laid out years ago with large houses which is now commencing to alter its character (one owner having sold his house and three acres of land to a builder who is going to build small houses on $\frac{1}{4}$ -acre plots), I am afraid this is a type of development which cannot very well be prevented; after all, the circumstances indicated by Mr. Stone exist, I suppose, in the suburbs of all large towns where the time has arrived or is arriving when the large old-fashioned house with big grounds is not wanted, and the economical course is to redevelop as the builder in question is proposing to do. In the case cited it may very well be that there may be some damage to the remaining property when the first step in this necessary redevelopment takes place, but I cannot see how any claim against the planning authority can be justified in a case of this kind, and it is clear that the adjoining owner has no claim for compensation under the scheme. Of course the adjoining owners all have the right of coming to the public inquiry and objecting to the provisions of the town plan which permitted the development now contemplated by the builder. Further, in due course, the adjoining owner will, no doubt, find it desirable to redevelop his own property in the same way.

Proposed reservation of Land as a Public or Private Open Space.

44. It appears from Mr. Stone's paper that, as an alternative to the purchase of certain land as a public open space, a local authority suggested that an owner should use the land for agricultural purposes.

45. In this case, also, it is difficult to express any opinion which might be of value without knowing the whole of the facts, but it is assumed that the proposal arose during the interim stage, and if this assumption is correct, the owner would have a right of appeal to the Minister of Health against the refusal of permission to proceed with the

development of the land. In this connection Section 10 of the Act provides that where an appeal is dismissed by the Minister on the ground only that the land to which the appeal relates, though otherwise suitable for immediate development, should be reserved by the scheme for a public open space, and the Minister is satisfied that, if the appeal had been allowed, development for which permission was sought would have taken place within a reasonable period, the appellant may, subject to the Act, require the authority to purchase the land at a price to be agreed, or, in default of agreement, to be determined in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

46. So far as concerns the question of the reservation of the land in question as a *private* open space, the compensation payable would be the difference between the value of the land with all its potentialities and its value restricted to its use as a private open space.

Agreements under Section 34 of the Act.

47. The question of entering into agreements between a local authority and a landowner under Section 34 of the Town and Country Planning Act, 1932, has been referred to by Mr. Stone, and in the first place it might be well to refer to the provisions of the section.

48. The section provides that an owner and a local authority may agree that the owner's land shall be made subject to conditions restricting its planning, development and use in the same way as those matters might be dealt with by or under a planning scheme, and any such agreement is enforceable by the local authority against any person deriving title under such owner.

49. There are many matters in relation to the development or use of land upon which landowners and a local authority will be in agreement, and the section will provide the statutory authority for a formal agreement to be executed. The scope of the section is very wide, and is not

necessarily confined to matters which are actually dealt with in a particular scheme or in the Model Clauses of the Minister of Health, but may be extended to any matters as respects which a scheme might be made, viz., the matters which are set out in the Second Schedule to the Act.

50. So far as local authorities generally are concerned, any agreements with landowners which have as their object the sound development of land will be welcomed, and it is quite clear that landowners generally have much to gain by endeavouring to secure development of this kind.

51. Mr. Stone mentions a few matters upon which agreements under Section 34 have been negotiated, but there are many other matters which will give rise to such agreements, and it is difficult to offer any criticism without knowledge of the actual circumstances—each case must, I think, be considered and dealt with entirely on its merits.

52. It will, I think, be found in practice that a common form of agreement under the section is one which has its object the carrying out of development by the landowner on the one hand, and the execution of works for, or incidental to, such development by the local authority on the other, and the following examples will illustrate the desirability, and perhaps necessity, of an agreement under Section 34:—

- (a) Normally a local authority cannot be required to provide such public services as sewerage in anticipation of development, and in order to facilitate development an agreement might be reached embodying terms whereby the local authority will undertake to construct certain public sewers for the purpose of serving development to be undertaken by the landowner ;
- (b) It may be necessary before effective access can be given to certain contemplated development for a road to be constructed through the lands of an

adjoining owner, and in this case the local authority might agree the terms upon which they will construct the road, thereby enabling the owner to develop his land.

53. Up to the present it seems to me that Section 34 has been rather widely used in connection with the reservation of land for private open spaces, and has had the effect of giving statutory force to arrangements agreed before the scheme actually becomes operative.

Preservation of Trees and Woodlands.

54. So far as concerns the question of the preservation of trees and woodlands, Section 46 of the Act provides that for the purpose of securing amenity and for protecting existing amenities a scheme may include provisions for the preservation of single trees and groups of trees and in addition may specify areas of woodlands as areas to be protected.

55. Compensation cannot be excluded in respect of these provisions, and in my view Section 46 contemplates the preservation of those trees and woodlands which in the view of the local authority are of such a value from an amenity aspect to justify the payment of compensation. Some guide as to the trees contemplated is given in the Model Clauses, where the Ministry suggest that preservation should apply so far as concerns single trees to a tree over 30 feet in height, or having a trunk of a girth of more than 2 feet 4 inches at a height of 5 feet above the ground. Groups of trees are left to the discretion of the local authority, but the restrictions contained in the Model Clauses governing the cutting down of trees within such groups are applied only to trees of a height of not less than 12 feet.

56. As Mr. Stone states, no one can build where trees are standing without destroying them, and the question arises of determining in each case whether or not arrangements can be made for preservation in the laying out of the land for development.

57. In this case also it is quite clear that it is in the best interests of a landowner to preserve as many trees as he can in the laying out of his estate as nothing will add more to the amenities of his estate.

58. There may be cases where to preserve a group of trees would interfere unduly with the development of the estate or have the effect of sterilising a comparatively large area of land, and in such a case the local authority will have to consider whether or not the amenities obtained by the preservation of the trees are such as to justify payment of compensation.

59. It should be possible in most cases for the landowner and the local authority to reach agreement as to preservation of such trees as are worthy of preservation which do not interfere unduly with development. My experience in Manchester is that the matter usually resolves itself into a question of lay-out, and satisfactory arrangements can very often be made ; in any case the hardship to landowners caused by the preservation of trees is, in the majority of cases, more apparent than real, especially as the area covered by the trees is normally taken into consideration in computing the density of houses to be permitted.

60. In regard to the provisions of the Model Clauses, there are very many exceptions which would permit the removal of a tree or group of trees, and there is a right of appeal if the Council do not agree to the cutting down or lopping, &c., of a tree.

61. Mr. Stone raises four specific questions in regard to trees and woodlands :—

(1) *What is a group of trees?*

I think the answer is that each case must be dealt with on its merits, and if there is any dispute as to whether a particular acreage of trees is or is not a group, the matter, of course, can be argued, if it is objected to, at the Local Inquiry. I do not think many authorities will wish to

preserve large groups of trees, because, of course, compensation would be substantial.

(2) *What is meant by a felled area?*

I am not aware of the expression "felled area" having been used either in the Act or in the Model Clauses. Section 46 of the Act enables the town plan to specify areas of woodland to be protected, and the scheme may impose an obligation on the owner, if any part of the woodland is felled, to undertake such replanting as would be in accordance with the practice of good forestry. Accordingly, therefore, I think the answer to the question is that the section does not mean clear felling but can relate to any part of the area of woodland.

(3) *Who is to say when a tree has become dangerous?*

In the ultimate I think this must be the Court before whom the person who has offended by cutting down a tree which is claimed was not dangerous has to come to justify his action. Clearly, if an owner is advised by a competent person that a tree is dangerous, he is not likely to be subject to any proceedings at the hands of the planning authority, and, in any event, having had such advice he can safeguard himself by indicating to the planning authority that he proposed acting upon it.

(4) *What is to be the basis of compensation to an owner if he is not allowed to cut a tree or group of trees?*

The basis of compensation is the amount by which a landowner's property is decreased in value in accordance with Section 18 of the Act.

62. In regard to woodlands, the Act provides that the scheme may impose an obligation to replant, and this obligation is, of course, subject to the provisions of the Act as to compensation.

63. This paper has already become as lengthy as is desirable, and I trust that it may prove to be of some service to the members of the Institution.